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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,287	03/17/2004	Paul J. Hindrichs	293/057	5661

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EXAMINER

IZQUIERDO, DAVID A

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,287

Applicant(s)

HINDRICHs ET AL.

Examiner

David A. Izquierdo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-95 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1, 23, 44, and 76 are generic to the following disclosed patentably distinct species:

- Species 1: Screw.
 - a. Subspecies A: Figure 5.
 - b. Subspecies B: Figure 21.
 - c. Subspecies C: Figure 29.
- Species 2: Anchor structure.
 - d. Subspecies A: Figure 14.
 - i. Sub-subspecies I: self-expandable (paragraph 86).
 - ii. Sub-Subspecies II: Balloon-expandable (paragraph 86).
 - e. Subspecies B: Figure 16.
 - iii. Sub-subspecies I: self-expandable (paragraph 86).
 - iv. Sub-Subspecies II: Balloon-expandable (paragraph 86).
 - f. Subspecies C: Figure 17.
 - v. Sub-subspecies I: self-expandable (paragraph 86).
 - vi. Sub-Subspecies II: Balloon-expandable (paragraph 86).
 - g. Subspecies D: Figure 18.
 - vii. Sub-subspecies I: self-expandable (paragraph 86).
 - viii. Sub-Subspecies II: Balloon-expandable (paragraph 86).
 - h. Subspecies E: Figure 19.

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- ix. Sub-species I: self-expandable (paragraph 86).
 - x. Sub-Species II: Balloon-expandable (paragraph 86).
 - i. Subspecies F: Figure 20.
 - xi. Sub-species I: self-expandable (paragraph 86).
 - xii. Sub-Species II: Balloon-expandable (paragraph 86).
 - Species 3: Cinching structure.
 - j. Subspecies A: Figure 20.
 - k. Subspecies B: Figure 21.
 - Species 4: Anchor structures. Figures 35-37.
 - xiii. Subspecies I: comprised of nitinol (paragraph 106).
 - xiv. Subspecies II: comprised of polymer (paragraph 106).
 - xv. Subspecies III: comprised of stainless steel (paragraph 106).
2. The species are independent or distinct because they comprise distinct structure pertaining to separate inventions. A search of all the distinct inventions within one application would prove to be burdensome and inefficient, thus restriction between inventions is required,. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species (i.e. Species 4, Sub species A, Sub-species II), even though this requirement is traversed. **Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.** An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

3. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).
4. A telephone call was made to Robert R. Jackson on August 29, 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.
5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.
6. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.
7. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.
8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

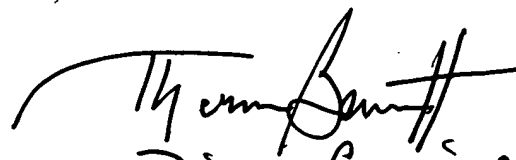
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Izquierdo whose telephone number is 571-272-1943. The examiner can normally be reached on Monday through Friday from 8:00 am until 4:30 pm.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David A. Izquierdo


Thomas A. Smith
Primary Examiner